

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2009-006829-001 DT
CR2009-173845-001 DT

11/20/2012

HONORABLE DAVID B. GASS

CLERK OF THE COURT
E. Aguilar
Deputy

STATE OF ARIZONA

ALANE ROBY

v.

DANNY WISE (001)

STEPHEN MERCER
DIEGO RODRIGUEZ

COURT ADMIN-CRIMINAL-CCC
JUDGE RAYES
MASTER CALENDAR UNIT
PRETRIAL SERVICES AGENCY-CCC

TRIAL SETTING

8:40 a.m. This is the time set for a Complex Case Management Conference in CR2009-006829-001 and CR2009-173845-001.

Courtroom CCB 903

State's Attorney:	Alane Roby
Defendant's Attorney:	Stephen Mercer (Advisory Counsel) Diego Rodriguez (appearing telephonically)
Defendant:	Present
Court Reporter:	Luz Franco

As to CR2009-006829-001 and CR2009-173845-001;

Over the past two weeks, the Court has engaged in extensive discussion with Mr. Wise regarding Mr. Wise's objection to his then counsel and self-representation.

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The current change in counsel has been the result of defendant's own actions and the delays created with regard to Mr. Wise's change in counsel are his responsibility. Mr. Wise's focus throughout the change in counsel and self-representation discussion related to Mr. Wise's goal of securing a continuance. At this point, Mr. Wise has until February 11, 2013 to finalize his defense with his new counsel. The trial was set to begin on October 9, 2012 and was moved to November 5, 2012 to allow Mr. Wise and his counsel additional time. As such, given the new trial date of February 11, 2013, Mr. Wise has had a continuance of 4 months in which to prepare for trial. The Court has made it clear that no further continuances will be considered.

In that regard, the Court fully advised Mr. Wise that Mr. Rodriguez would be the last attorney appointed to represent him and that Mr. Rodriguez is responsible for making decisions on tactics and strategy. Given the number of attorneys that Mr. Wise has engaged and discharged, particularly Mr. Dow on the eve of trial, if Mr. Wise chooses not to have Mr. Rodriguez represent him at some point in the future, Mr. Wise will need to move forward with representing himself. The Court has engaged Mr. Wise in lengthy discussions about acting as his own counsel so Mr. Wise is well aware of the issues he faces if he chooses to act as his own counsel in the future. Further, if Mr. Wise chooses to represent himself and refuses to work with Mr. Rodriguez as his advisory counsel, Mr. Wise will need to move forward without advisory counsel. Mr. Wise fully understands the limited role of advisory counsel at this point.

The Court notes, as it did on the record, that Mr. Wise recognized that Mr. Dow spent a great deal of time developing Mr. Wise's defense, investigating his defenses, requesting documents, and interviewing those individuals who could be interviewed. In short, Mr. Dow had done what was necessary to provide Mr. Wise with a competent defense at trial and those efforts will inure to the benefit of new counsel.

IT IS ORDERED that in that regard, Mr. Dow shall give Mr. Rodriguez his complete file related to Mr. Wise no later than November 30, 2012 so that Mr. Rodriguez can proceed with Mr. Wise's defense.

In February 2012, the previous judge made it clear that Mr. Wise and his counsel were responsible for reviewing the very documents about which Mr. Wise currently complains. At that point, Mr. Wise had not hired Mr. Dow. Mr. Wise's counsel (before Mr. Dow) was to review the documents by February 24, 2012 or notify the court regarding any delay. Given disclosure from Mr. Wise's counsel (before Mr. Dow), it appears the court-ordered review occurred. Mr. Rodriguez further is familiar with the documents and their location because of his recent appointment to represent Mr. Wise in an unrelated federal matter. The documents remain available to defendant and to defense counsel to review, as they have been available since at least February 2012.

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The Court has made it clear to Mr. Wise and his new counsel that the current delay will not reopen discovery in this matter. For example, if prior counsel has interviewed a witness, new interviews will not be ordered. If orders such as the February 2012 order regarding the documents in the federal case addressed an issue, the Court will not reopen that issue.

The Court anticipates no need for further hearings before the final trial management conference. If counsel need court intervention in this matter, they are directed to request a status conference. Otherwise, the Court expects that parties and their counsel to appear for the final trial management conference prepared for the trial on February 11, 2013.

IT IS FURTHER ORDERED setting this matter for a **Firm Trial date of February 11, 2013 at 8:00 before the Master Calendar Assignment Judge** in Courtroom 5B in the South Court Tower. All subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

IT IS FURTHER ORDERED setting a **Final Trial Management Conference on January 24, 2013 at 8:30 a.m. before this division.**

JOINT CASE MANAGEMENT REPORTS:

No less than two working days before each Case Management Conference, the parties shall file a Joint Case Management Report. This report will inform the court of:

1. The specific progress made since the last Case Management Conference in completing activities previously established by the court and the parties;
2. Specific case preparation to be completed before the next Case Management Conference;
3. Witnesses who have been interviewed in the preceding month;
4. Witnesses who will be interviewed in the upcoming month;
5. Pending issues to be resolved.

The Defendant having waived the applicable time limits,

IT IS FURTHER ORDERED excluding all time.

NEW LAST DAY: 3/25/2013.

IT IS FURTHER ORDERED affirming prior release orders.

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9:06 a.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>.
Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.